



Appeal Decision

Site visit made on 17 September 2019

by M Heron BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th November 2019

Appeal Ref: APP/X1545/W/19/3231263

Land adjacent to Rickerby, Fambridge Road, Hazeleigh CM9 6PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Graham Medlin against the decision of Maldon District Council.
 - The application Ref FUL/MAL/19/00347, dated 22 March 2019, was refused by notice dated 10 June 2019.
 - The development proposed is described as the 'change of use of the land for the stationing of a caravan for permanent residential occupation, removal of existing caravan, form base and erect new mobile home, install septic tank, erect timber frame garage and form a new access point.'
-

Decision

1. The appeal is dismissed.

Preliminary Matters

Lawful use of Existing Caravan

2. This proposal would involve the removal of a static caravan from the appeal site, which was indeed present at my site visit. From the evidence before me, this was occupied by one of the previous residents of the adjacent dwelling known as Rickerby before, during and after a fire at this property in 1999. The caravan, as well as some of the land close to it, is now separated from Rickerby by fencing and is in a different ownership to this dwelling.
3. There appears to be a dispute between the parties as to whether the existing caravan represents a separate, independent, dwellinghouse or whether it has an ancillary use to Rickerby. However, this is not a matter for this appeal.
4. In any event, the submitted application form describes the development as the 'Change of use of the land for the stationing of a caravan for permanent residential occupation...'. This implies that the proposal seeks permission for a new, independent, residential dwellinghouse which would have a materially different use to the existing caravan. I have therefore considered the appeal on this basis.
5. Notwithstanding the above, it is open to the appellant to apply to the Council to have the existing lawful use of the caravan determined under section 191 of the Town and Country Planning Act 1990. Any such application would be unaffected by my determination of this appeal.

The Nature of the Proposed New Dwelling

6. The appellant's submitted description of development defines the proposed new residential property as a 'caravan' and a 'mobile home'. However, from the evidence before me, it would be physically attached to the ground. I also have no substantive evidence to suggest that the appellant intends to move this dwelling to other locations within the site or elsewhere, or that it would be easy to do so once sited. I therefore consider that it represents operational development in the form of a permanent building and proceed to determine the appeal on this basis.

Main Issues

7. The main issues are:
 - whether or not the appeal site is a suitable location for a new residential development having regard to local and national planning policy for the delivery of housing;
 - the effect of the proposal on the character and appearance of the countryside; and
 - whether or not the proposal would be acceptable in terms of flood risk.

Reasons

Suitable Location

8. The appeal site is positioned to the south of Maldon, on the eastern side of Fambridge Road. The site is outside of any settlement boundary as defined by the Maldon District Approved Local Development Plan (LDP). For the purposes of planning policy it is therefore in the countryside.
9. Policies S1 and S8 of the LDP form part of the Council's spatial vision and development strategy. Amongst other things, this vision seeks to support developments within settlement boundaries and prioritise development at the Garden Suburbs and Strategic Allocations. This is partly to ensure that communities have access to local services to support their health, social and cultural well-being and that patterns of growth make the fullest use of public transport, walking and cycling. This strategy is supported by Policy H4 of the LDP, which seeks to ensure that consideration is given to the accessibility of local services and the proximity of public transport.
10. The appeal site is located within a small ribbon of scattered development set along both sides of this part of Fambridge Road. Whilst it is not a part of any settlement, I therefore find that it is not isolated in terms of the National Planning Policy Framework (the Framework). Nonetheless, the appeal site is a considerable distance away from any settlement and the limited services nearby would not meet all of the day-to-day needs of future residents. There does not appear to be any public transport services close to the site. In addition, accessing the larger settlement of Maldon by foot would involve walking along a section of Fambridge Road which is unlit and has no footways. This is potentially dangerous, especially so during inclement weather and hours of darkness. For the same reasons, cycling would not be a particularly attractive alternative.

11. Taking all of the above into account, I have no doubt that future residents of the proposed dwelling would not only be some distance from the day-to-day services they need but they would also rely heavily on a private vehicle to get around. In addition, the scheme would undermine the part of the Council's spatial vision which seeks to deliver planned growth at Garden Suburbs and Strategic Allocations. I therefore find that the appeal site is not a location where a new dwelling would normally be considered acceptable. This is a significant factor weighing against the scheme.
12. I note that there are existing dwellings along this part of Fambridge Road and in the wider rural area which do provide residents with realistic public transport options. Nevertheless, this is not a justification for permitting a new dwelling that would fail to accord with the Council's spatial vision for growth.
13. For the reasons given, I conclude that the appeal site would not be a suitable location for residential development as it would not afford suitable access to services and facilities, including public transport facilities, and a dwelling at this location would undermine the Council's strategy for planned growth. The proposal would therefore conflict with the Council's spatial vision as set out by Policies S1 and S8 of the LDP and supported by Policy H4 of the LDP. In addition, it would conflict with the Framework insofar as it seeks to ensure developments contribute to giving people a real choice about how they travel and help towards the achievement of a low carbon future.

Character and Appearance

14. The appeal site is a broadly rectangular parcel of land close to Rickerby which, apart from the existing caravan, is predominately open. A large, open, agricultural field abuts the site's eastern boundary. The ribbon of development in which it is located is also surrounded by similar fields. I therefore found that the immediate area has a distinctly rural character. I appreciate that the existing caravan does not make a positive contribution to the appearance of the countryside. However, given its size and the presence of a hedgerow to the front of the site, it is relatively unobtrusive in the landscape.
15. The proposal seeks full planning permission for the removal of the existing caravan and the construction of a new single storey dwellinghouse with an associated detached garage and septic tank. On the evidence before me, this new dwelling would have the appearance of a bespoke bungalow. A new access would also be formed onto Fambridge Road.
16. I appreciate that the proposal would provide all of the comforts of a traditional dwellinghouse and would conform to British Standard 3632. Nonetheless, it would introduce a number of urbanising features to the site associated with its permanent occupation. This would include several residential buildings, hard surfaces, boundary treatments to dampen noise from the adjacent carriageway and a garden with its domestic paraphernalia. Not only would this erode some of the open space at the appeal site, but it would also appear out of character in this rural setting. Moreover, the proposal would be greater in width and depth compared to the existing caravan and a section of hedgerow would be removed to facilitate access to it. Consequently, the scheme would be more apparent within the landscape compared to the exiting caravan. This would reinforce its harmful urbanising impact.

17. Taking the above into account, notwithstanding the comments from the Parish Council, I am not persuaded that the proposal would integrate effectively with its surroundings. On the contrary, it would represent a conspicuous urban feature that would fail to function well or add to the quality of the area, as advocated by the Framework.
18. My attention has been drawn to a large housing development close to the appeal site. However, in the absence of details about its nature and location or how it was assessed, this carries little weight in my assessment of the appeal scheme, which I have performed based on its individual planning merits.
19. For the reasons given, I conclude that the proposal would harm the character and appearance of the countryside. It would therefore conflict with Policies S1, S8, D1 and H4 of the LDP. Amongst other things, these seek to ensure that developments respect and enhance the character of the surrounding area. Outside of settlement boundaries, they also require developments to maintain the character and beauty of the countryside.

Flood Risk

20. The appeal site is located within Flood Zone 3. Although the evidence before me shows that the site is approximately 1.5 miles away from a river, the Planning Practice Guidance (PPG) indicates that it is on land which has a high probability of flooding. The development is also classified as being 'more vulnerable' to flooding by the PPG.
21. With regard to the above, and to paragraph 163 of the Framework, I consider that a site-specific flood risk assessment (FRA) should be provided for this development. Paragraph 163 of the Framework also states that development should only be allowed in areas at risk of flooding where, in light of this assessment, and amongst other things, it can be demonstrated that the development is appropriately flood resistant and resilient and any residual risk can be safely managed.
22. The appellant has provided a Homebuyers Search Report (HSR). This identifies that there is at a medium risk of tidal/fluviol flooding and a high risk of surface water flooding within 25 metres of the appeal site. However, this document does not show the impact of the proposal itself on the risk of flooding at adjacent sites. Neither does it identify or discuss any mitigation measures which may be necessary to reduce the risk of flooding on or off-site. I am therefore not persuaded that the HSR provides a suitable evaluation of flood risk. My assessment in this regard is reinforced by the comments of the Environment Agency, who have raised objection to this scheme on the basis that an FRA has not been submitted despite having access to the HSR.
23. I acknowledge that the appellant states that there is no history of flooding at the appeal site and that the finished floor level of the proposal would be above ground level. However, taking all of the above into account, I cannot ascertain whether or not this proposed development would be suitably flood resistant, or conclude on the merits of any potentially essential mitigation. Neither can I be certain that the appellant's suggested strategy for dealing with a flood event is appropriate.
24. My attention has again been drawn to the large development close to the appeal site. However, this appears to be in a different Flood Zone compared to

the proposal and is therefore not directly comparable to it in this regard. In any event, I have already found that this development should attract little weight in my assessment of the appeal scheme.

25. For the reasons given, I am not satisfied that the proposal would be acceptable in terms of flood risk. I therefore cannot be certain that it would not conflict with the provisions of Policy D5 of the LDP. Amongst other things, this seeks to ensure that proposals do not increase flood risk on site or elsewhere and are located in areas where their use is compatible with national planning policy. Notwithstanding this, even if the proposal was considered acceptable in terms of flood risk, this would not have been determinative in my decision as I am dismissing this scheme for several other substantive reasons.

Other Consideration – European Sites

26. It would appear that the appeal site falls within a 'Zone of influence' for one or more European designated sites. Natural England has provided revised advice regarding the need to ensure that new residential development and any associated recreational disturbance impacts on European designated sites are compliant with the Habitats Regulations. In this case, the Council concluded that the proposal would be unlikely to harm European Sites without any mitigation.
27. However, the Court of Justice of the European Union has ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the framework of an Appropriate Assessment (AA) rather than at the screening stage¹. As the competent decision making authority, if I had been minded to allow the appeal it would have therefore been necessary for me to go back to the parties to seek further information in order to complete an AA for this scheme. However, as I am dismissing the appeal for other reasons, I have not taken the matter further.

Other Matters

28. Any concerns regarding the Council's behaviour whilst it processed and determined the planning application fall outside of the remit of this decision. In addition, it is a well-founded principle that the planning system does not exist to protect or benefit private interests such as the value of land and property.

Planning Balance

29. The Government is seeking to significantly boost the supply of housing. Therefore, although the Council is able to demonstrate a five year supply of housing land, this is not a reason to resist additional housing on other suitable sites. The proposal for a single, two-bedroomed, dwelling would make a minor contribution to the Council's housing stock, with associated social and economic benefits. These factors weigh in the scheme's favour.
30. I also note that the proposal would be acceptable in other respects. For example, its access would not prejudice highway safety and the internal living conditions would be acceptable. However, these are requirements of the development plan and are neutral factors in the overall planning balance.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

31. On the other hand, I have found that the appeal site would not be a suitable location for residential development as the proposal would not afford appropriate access to services and facilities, including public transport facilities, and would not align with the Council's strategy for planned growth. Neither would it comply with the Framework's aim of locating housing in rural areas where it would enhance or maintain the vitality of rural communities. Furthermore, I have found that the scheme would result in harm to the character and appearance of the countryside and I cannot be certain that it would be acceptable in terms of flood risk. These are matters which both individually and collectively attract significant weight.
32. In my view, the adverse effects would outweigh the benefits associated with the provision of one dwelling. The proposal conflicts with the development plan and there are no material considerations, including the advice of the Framework, which outweigh this conflict.

Conclusion

33. For the above reasons, and having regard to all other relevant matters raised, I conclude that the appeal should be dismissed.

M Heron

INSPECTOR